IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sona Ram. Versus Oma Ram & ors.

S.B. Criminal Misc. Petition No. 1372/2006
against the order dated 16-10-2006 passed
by the Addl. Sessions Judge No.3, Jodhpur,
in Criminal Revision No. 79/2006.

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Date of Order: October 20, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. C.R. Jakhar, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 16.10.2006 passed by the Additional Sessions Judge No.3, Jodhpur (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 79/2006, by which the revision petition filed by the petitioner against the order dated 9-10-2006 passed by the Sub-Divisional Magistrate, Osian, district Jodhpur (for short, "the Executive Magistrate" hereinafter) was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the orders passed

by the Executive Magistrate as well as the Revisional Court.

In a nut shell, the facts of the case, as stated by the petitioner, are that the petitioner and his brothers Tulcha Ram, Nena Ram and Nimba Ram are having a joint Khatedari agricultural land bearing Khasra No.62, measuring 50 Bighas and 8 Biswas, in which the petitioner, his brothers Nena Ram and Tulcha Ram had ½ share and half share was of petitioner's brother Nimba Ram. Tulcha Ram sold his share to non-petitioners No.1 to 4 vide sale deed dated 3-6-2006. The non-petitioners No.1 to 4 tried to take possession over the land purchased by them from Tulcha Ram, on which the petitioner filed a revenue suit for declaration, partition and permanent injunction in the Court of the Assistant Collector, Osian. Along with the revenue suit, an application for temporary injunction was also filed, on which the Assistant Collector, Osian issued temporary injunction restraining the non-petitioners No.1 to 4 to interfere in the possession of the petitioner over 4/15 share in Khasra No.62 measuring 50 Bighas 8 Biswas. As per petitioner's case, the non-petitioners No.1 to 4, despite temporary injunction order, tried to trespass over the land in dispute, on which a complaint was filed by the petitioner before the Executive Magistrate, who after drawing a preliminary order under Section 145 (1) of the Code, vide order dated 8.8.2006, attached the land in dispute under Section 146 (1) of the Code and appointed

the Tehsildar, Osian as the receiver. The Tehsildar attached the land and directed the Patwari concern to look after the attached land. Aggrieved by the order of the Executive Magistrate, the non-petitioners filed a revision petition,which has been dismissed by the Revisional Court vide order dated 5-9-2006. Aggrieved by the order of the Revisional Court, the non-petitioners No.1 to 4 filed S.B. Criminal Misc. Petition No.1192/2006 before this Court, in which this Court passed the interim order dated 8-9-2006 to the effect that the land in dispute may not be auctioned. The non-petitioners No.1 to 4, despite attachment of the land, tried to trespass over the land in dispute, on which first information reports were lodged. On 9-10-2006, the non-petitioners No. 1 to 4 filed an application before the Executive Magistrate for allowing them to irrigate the land in dispute, which was allowed vide order dated 10-10-2006. The revision petition filed by the petitioners against the order dated 10-10-2006 passed by the Executive Magistrate has been dismissed by the Revisional Court vide impugned order dated 16-10-2006.

From a bare perusal of the orders passed by the Executive Magistrate and the Revisional Court, it appears that the orders impugned have been passed to save the crop of ground-nuts from being damaged for want of irrigation. No such application for irrigating the land in dispute was filed by the present petitioner seeking permission to save the crop from

being damaged. From a perusal of the order impugned, it is clear that the yields of the crop would not reach the non-petitioners No.1 to 4 and the application filed by was allowed only for irrigating the land in dispute in order to save the same from being damaged for want of irrigation. In this view of the order, I do not find any error or illegality in the orders impugned, which may warrant interference in the inherent jurisdiction. It cannot be said that the order impugned would result in manifest injustice or abuse of the process of the Court.

Consequently, the criminal miscellaneous petition is dismissed.

(H.R. PANWAR), J.

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